Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 12 noon, on Tuesday the 7th Mithunam 1091/20th June 1916.

Present.

DEWAN BAHADUR, M. KRISHNAN NAIR ESQ., B. A. & B. L., DEWAN.....*Presiding.*

A. J. Vieyra Esq., B. A.
N. Subrahmanya Aiyar Esq., M. A.
R. Mahadeva Aiyar Esq., B. A.
K. V. Rengaswami Aiyengar Esq., M. A.
N. Raman Pillai Esq., B. A.
John Kuriyan Esq., B. A., B. C. E.
I. C. Chacko Esq., B. A., B. Sc.
J. A. Richardson Esq.
K. Parameswaran Pillai Esq., B. A. & B. L.
K. G. Sesha Aiyar Esq., B. A. & B. L.
K. G. Parameswara Menon Esq., B. A. & B. L.
T. K. Velu Pillai Esq., B. A. & B. L.
Paul Daniel Esq., M. A. & L. T.

K. Narayanan Pandalay Esq., B. A. & B. L.....*Secretary.*

The Secretary reported to the Council that Messrs. I. C. Chacko, B. A., B. Sc., and Paul Daniel, M. A. & L. T., who had been appointed Members of the Council, took their seats in Council that day.

The Secretary also reported that the following petitions had been received on the Land Conservancy Regulation Amendment Bill:—

1. Petition dated the 18th Kanni 1091 from the Vanjippuzha Chief.
2. Petition dated the 2nd Thulam 1091 from the Poonjat Chief.
3. Petition dated the 24th May 1916 from the Senior Koil Thampuran of Kilimanur Palace.

The Secretary stated that the first two of the above petitions had been reported to the Council at its meeting held on the 13th December 1915/28th Vrischigom 1091, and that the Council had then resolved that the petitions be put off for consideration at the meeting at which the Bill would be taken up for final reading.

THE CRIMINAL TRIBES BILL.

Mr. Subba Aiyar being absent, Mr. Vieyra moved for permission to withdraw the Criminal Tribes Bill. He said that, since the Bill was introduced in the Council in Mithunom 1090, doubts arose as to the desirability of the law in Travancore and that the Commissioner of Police, who was consulted, had advised the Government as follows:—

"The danger which the Regulation is framed to guard against, *viz.*, the entry into Travancore of criminal tribes from British India, it is in fact likely to facilitate. I observe that the legislation was taken under consideration at the instance of the Madras Police who have or had a scheme in hand of planting their criminal tribes controlled under such legislation among the planting districts, and Travancore has been saved from suffering by this experimental scheme by the absence of any such legislation in the State, for the Madras authorities cannot afford to plant their criminals beyond control. The working of the proposed Regulation would be extremely difficult and expensive and it would certainly not be effective from our point of view".

In the circumstances, Mr. Vieyra moved for permission to withdraw the Criminal Tribes Bill.

Seconded by Mr. Subrahmanya Aiyar.
Carried.

THE MARKETS BILL.

Mr. Vieyra then introduced the Markets Bill, and said that there was no definite law to regulate markets in places other than Towns under the Towns Conservancy and Improvement Regulation. He said that the right to open a new market was a franchise to be granted by the Crown, and that in Travancore new markets had from time immemorial been opened only with the previous sanction of Government. As, however, an instance had recently been brought to the notice of Government in which a new market was opened in a place not approved of by Government and to the prejudice of existing markets in the neighbourhood, and as it was feared

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that the holding of such unauthorised markets was likely to cause disturbances of the public peace, Mr. Vieyra said that a measure of the kind, giving Government control over such private markets, was very necessary. He therefore moved that the principle of the Bill be affirmed.

Seconded by Mr. Subrahmanya Aiyar.

Mr. Velu Pillai, in opposing the proposition, said as follows:—

"Sir,

On reading the draft Bill and following the arguments contained in the Statement of Objects and Reasons, I feel constrained to oppose the motion. To my mind the proposed piece of legislation is unnecessary and has to be viewed as a retrograde measure. Trade is in its infancy in our State and the best efforts of Government and the people have to be put forth in developing it on healthy lines. The agencies of distribution of wealth have considerable influence on its production and consumption and any restriction placed on the former will exert a corresponding influence on the latter.

The object of the Bill is to regulate markets in places other than Towns which are governed by Regulation III of 1076. It seems to me that the difficulties which the proposed legislation is intended to avert are more or less of an imaginary character. The learned Mover draws pointed attention to an instance in which a market has been recently opened without the sanction of Government and expresses a fear that unauthorised markets are likely to cause a disturbance of the public peace.

With regard to the latter argument, I may say at the very outset that such fears are not legitimate. The laws in force in Travancore are not so defective as to necessitate further Regulations being passed for preventing breaches of the peace. The Criminal Procedure Code, the Penal Code and the Police Regulation are sufficient for the purpose. There appears to be no particular reason why there should be any special law to prevent breaches of the peace in the markets. Breaches of the peace may take place in the progress of a religious or marriage procession through any place inhabited by unfriendly people. Yet it has not been considered necessary to regulate marriage and religious festivals by a system of licenses as the proposed measure contemplates. I would ask my friend to substantiate his argument by a reference to actual cases of such disturbance caused by the holding of private markets.

With regard to the other argument advanced by my friend the Mover, I have to say that our Government have never before asserted any paramount right over markets and fairs. These institutions have never been a source of income in the Hindu States of old whose traditions our Government cherish today. I am a student of History and can claim to have paid some attention to the subject. But I have not been able to light upon instances in which any Indian Ruler has claimed the right over markets and fairs situated within his dominion. Markets have never been considered to be sources of income. "The King shall set up markets" says Kautillia the great economist of India. But there are no words in his work to the effect that he shall exercise his ownership over markets, such ownership being reserved to trading in reservoirs and lakes which admittedly belong to the Crown.

I do not intend to enter into any academic discussion of the subject. I have merely to point out that our Government have never till now infringed the rights of property inherent in the people by setting up a claim to private markets. The action of Government has always been consistent and clear. I have not been able to find out any authority for the position taken by my learned friend. Our Statute book is silent on the matter and books compiled by the authority of Government, such as the Revenue Manual and the State Manual, do not mention it. It is significant that while Government have always been careful to frame rules regarding minerals, treasure trove and Royal trees, there is no attention paid to markets. Some of the orders of Government that I have been able to find out lead us to conclude that Government never entertained the idea of placing any restriction on the free growth of markets and the development of commerce. Far from claiming any novel rights over markets and making a profit out of them, our gracious Sovereign and His benign Government have relinquished the interest of Government on market sites in favour of the people.

Government Order No. 2150/L. R. 9040, dated 7-12-06 shows clearly that the object was to limit their authority over markets and not to extend it. In answer to a letter from the Division Peishkar, Padmanabhapuram, the Government ordered that "the levy of Kadapattam may be restricted to the shops in the Towns under the Towns Conservancy and Improvement Regulation. Closely following it is the G. O. No. 3988/ L. R., dated the 3rd May 1911, which runs thus:— "His Highness' Government sanction the transfer of the shop-sites from the head of Porambоke to that of assessed waste and they direct the registry of the sites on Pandarapattam in the name of the occupants. The sites should be charged with an assessment of one fanam per one hundred square feet as agreed to by the occupants but no acreage value need be levied in the circumstances of the case". It has to be remembered that the sites mentioned were in the flourishing Town of Kayankulam. No further evidence is required to show the intention of Government.

The learned Mover of the Bill observes that new markets have from time immemorial been opened only with the previous sanction of Government. I am unable to understand if it is intended to make this remark applicable to both public and private markets. If it relates only to public markets the people have nothing to complain, but if private markets are also sought to be

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placed within the purview I am forced to question its accuracy. I am at a loss to know on what materials he has established his position. There is no rule which lays down such a procedure and no legal sanction to compel any person to follow it. To my knowledge there is no universal or continuous custom, and if any one has unnecessarily requested a permission which is not required by law, that circumstance cannot bind the entire population. In some cases, people might have asked for sanction out of their traditional reverence to Government or allured by considerations of prestige. A market started under the auspices of Government does surely get some degree of initial advertisement and that alone should have been the object of such applicants. Even if for argument's sake, it be granted that such has been the practice, the definition of the term "market" in the proposed Bill complicates the matter still further. For, in olden days, a market was certainly much more than a cluster of 4 shops. These observations will, I hope, show the Council that the right to open a market is not a franchise to be granted by the Crown or acquired by prescription as my learned friend will have it. These are conceptions borrowed from English law, but I beg to submit that obsolete legal maxims from Blackstone or Coke or Littleton cannot change the existing laws in Travancore. In British India, the right to open a market is one of the ordinary incidents in the enjoyment of immovable property. The Government do not interfere with this right. In some places such as Tanjore several charities own markets which bring in an appreciable income. It is worthy of note that Madras Act V of 1884 as modified by Act VI of 1900 which might perhaps have served as a model for this Bill does not give any such right to the Government. The power of declaring that any place is a market is vested in the Taluk Board which is a representative body. The conditions obtaining in British India are different from what they are in Travancore. The highly developed village life of those parts contrasts forcibly with the isolated homesteads in this State and the rule is likely to do considerable mischief here. I venture to say that this measure will fetter the independent exercise by the people of a right which they have been exercising from time immemorial, which has been ripened by custom and which is necessary to protect the interests of trade. So much for the right of Government and the expediency of declaring places to be markets. The Bill, it would appear, is drafted mainly on the lines of the new Bill amending the T. I. C. Regulation. But the wiser course should have been to wait till that Bill is passed into law. So far as I can see, the changes sought to be effected are detrimental to public interests. Regulation III of 1076 gives a very limited authority even to the Presidents of the T. I. C's. The present Bill gives greatly increased powers to the Dewan Peishkar and his nominees. Roughly speaking, the word, 'Dewan Peishkar' seems to be substituted for the word 'Committee' which occurs in the old Regulation. It is significant that while Section 13 sub-section (5) makes a shop-keeper whose license is time-expired liable to punishment, the beneficial provisions of Section 117 E, sub-section (6) of the Madras Act, which gives him the right to continue the shop in case of neglect to pass order by the Taluk Board, has been omitted in the present Bill. The authority proposed to be accorded to "persons authorised by the Dewan Peishkar" to enter and inspect shops, to remove articles, to seize weights and measures, and more important than all these, to start prosecutions and then compounding offences, will set a premium on jobbery and corruption. I would go to the extent of saying that even Magistrates are not always infallible. The Bill contemplates several technical offences each of which will open the door to fraud and peculation. An array of low-paid officials armed with authority to molest traders will be a menace to the peace and prosperity of the land. I don't lose sight of the fact that the Dewan Peishkar can control his subordinates and come to the rescue of the victims of oppression. But the Peishkar is already a hard-worked if not an over-worked officer. Years have to roll on before the ordinary rustic plucks up courage to approach this dignitary, to stand face to face with him and represent his grievances with the hope of redress. Even if such a safety valve be found possible, I hold that too much work and worry will make the Peishkar indifferent to his duty and prepare him to receive the distorted versions that reach him from his own subordinates.

There is one other aspect of the question which cannot be passed over. I mean the levy of fees on licenses. If Government open out a market it is but fair that they should get stallages, rents and other dues. For herein the State merely plays the part of a capitalist; but the matter assumes an altogether different aspect when it is laid down that a private market cannot be opened or continued without license and when that license has to be renewed from year to year on payment of a fee arbitrarily fixed by Government. The fees thus become a tax under which the shop-keeper will have to smart for ever and the ultimate incidence of which will be on the consumer. The Dewan Peishkars will not be slow to exercise their powers of creating markets. For the general revenues of the State will show an increase, a result for which they may take some degree of credit. In British India, be it noted, the Government have no such power. Markets will be constituted by the Local Boards and these Boards have no power to levy fees except with the sanction of the Governor in Council. It has also to be kept in mind that the money obtained by the Local Boards will be utilised only for local purposes and will not go to swell the general exchequer as it is likely to do if our Bill becomes law.

The above feature of the proposed piece of legislation is not referred to in the Statement of Objects and Reasons but has to be gleaned from the Sections as they stand while the Statement is explicit on fees levied on the occupiers of public markets. I believe it is not a mere oversight. If the Bill is to be introduced for purely fiscal purposes, the matter would stand on a different footing. But luckily for us, the Government have no such intention and I need not therefore attempt to show that even on that ground the Bill has to be rejected.

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There is one consideration regarding markets which I have not lost sight of. In the bigger markets of the State frequented by large numbers of people there ought to be some kind of control. At present such markets are scenes of petty oppression and injustice. Something has to be done to remedy these evils, but the present Bill is not sufficient for the purpose. I venture to state that Local Bodies alone will be able to cope with the problems of market administration. I request that the Government will be pleased to take this question into consideration without delay.

In conclusion, I have to request you, sir, to drop the present Bill altogether as that course is necessary in the interests of the development of commerce, the welfare of the people and the good of the country."

Mr. Parameswaren Pillai supported Mr. Velu Pillai and opposed the motion. The former said that he did not understand the exact reasons why the Government should take the power of controlling the markets and introduce a law for that purpose, especially as such power was not exercised by any other State or by the authorities in British India. Mr. Parameswaren Pillai was of opinion that a single instance of unauthorised opening of a market would not be sufficient to necessitate legislation in regard to such an important matter. The Member pointed out that in British India the power was exercised not by the Government, but by the District Boards and Municipalities and that there was no reason why a Bill of the kind proposed was necessary in Travancore in regard to markets situated outside the limits of Towns.

Mr. Mahadeva Aiyar said that he knew from experience that the markets situated outside Towns required some sort of control for the purpose of keeping them in sanitary condition. He was of opinion that some law to regulate such markets was absolutely necessary in the interests of public safety and on sanitary grounds.

Mr. Vieyra replied that, so far as the principle of the Bill was concerned, the Division Peishkars had been consulted and their reports had been received to the effect that the proposed legislation was absolutely necessary in order to have some control over private markets. He quoted an instance where the Government had, by their executive order, to interfere between two rival parties with reference to a market, for the sole purpose of preventing a breach of the peace. It was therefore with a view to afford protection to people going to private markets and to enforce proper sanitary measures in such markets that the proposed measure was introduced.

Before taking the sense of the Council, the President observed that it was only the principle of the Bill that was being discussed then, but that, if the Council adopted the principle, the Bill might be referred to a Select Committee who will have ample opportunity to consider in detail the several provisions of the Bill and whose report might afterwards be carefully considered by the Council. With regard to the principle of the Bill itself, the President pointed out that the object of the Government was not to make money out of it, but only to regulate and control the markets in the interests of the people themselves, there being, unlike in British India, no Local Boards in Travancore to exercise any sort of control over such markets. It was therefore in the place of the Local Boards in British India that the Government had stepped in, in order to prevent breaches of the peace, to provide for proper sanitation and to check unfair commercial competition among rival market-owners.

Votes were then taken, and, as the majority of the Members were in favour of the Bill, its principle was affirmed.

Mr. Vieyra then moved that the Bill be referred to a Select Committee consisting of Messrs. Subrahmanya Aiyar, Mahadeva Aiyar, Subba Aiyar, Velu Pillai, Sesha Aiyar, Parameswara Menon and the Mover, to report within three months.

Seconded by Mr. Raman Pillai.

Carried.

THE COMPANIES REGULATION AMENDMENT BILL.

In moving that the Companies Regulation Amendment Bill be finally read, Mr. Vieyra proposed that the words "1st Thulam 1092" be added at the end of Clause (2) of Section 1 of the Bill, as the date from which the proposed Regulation should come into force.

Seconded by Mr. Mahadeva Aiyar.

Carried.

Mr. Vieyra then moved that the Bill be finally read and passed.

Seconded by Mr. Raman Pillai.

Carried.

THE LAND CONSERVANCY REGULATION AMENDMENT BILL.

The Secretary then gave the substance of the petitions received on the Land Conservancy Regulation Amendment Bill.

The objection raised by the petitioners was that the Government were not justified in interfering with the proprietory rights of absolute owners of land, such as the proprietors of Edavagais, and that Section 3, sub-section (2) of the proposed Bill, which provided that "all

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